1950.

File No. OBCSRs/50

Legal Department.

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Subject:—

Opinions under the Bombay Civil Services Rules

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File No. OBCSRs/50

Gen. 194 e.

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C O N T E N T S.

Legal Department File 0 BCSRs. 1950

1950

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Office of the R.L.A.

Whether the leave salary or pension of Mr. J.H. Shekhani can be set off against balance due from him under a mortage bond.

The Collector's proposal to refuse the payment of leave salary and to sanction pension would, in effect, apart from its legality, be intended to bring pressure on Mr. Shekhani to pay the dues under the mortagage bond. Such pressure would not serve any useful purpose if Mr. Shekhani is unable to pay the amount. The proper course would, therefore, be to enforce the mortgage bond by a process under the Land Revenue Code and then to proceed against his other property, if any, for the balance. Neither the leave salary nor the pension of Mr. Shekhani could be set off against the balance under the mortagage bond for the latter would not be deemed to have arisen out of or incidental to the service (See Sirkar on 'Master and Servant' at page 79). Mere inability of Mr. Shekhani to satisfy the dues would not amount amount to mis-conduct either for the purpose of reducing the pension or refusing to sanction it.

Remembrancer of Legal Affairs.

U.R. to P.& S.D. No. 1298 dated the 28th January 1950.

Office of the R.L.A.

CONFIDENTIAL.

The undertaking given by Mr. Munshi is indefinite in point of the duration of the agreement. It cannot be taken to mean that Mr. Munshi was bound to serve the Government till his retirement. Besides that undertaking in the form in which it is taken does not constitute a valid contract. An action for damages against Mr. Munshi for breach of the condition does not appear to be tenable. Similarly, in the absence of an express stipulation to refund the leave salary, an action for such refund is not also feasible.

2. Rule 751 of the B.C.S. Rules, which relates to granting leave for the purpose of study, provides that leave may be granted to Government servants on such terms as may be prescribed by General or Special orders of Government to enable them to study scientific technical, or similar problems or to undergo special courses of instruction. The General orders of Government in this behalf are contained in Study Leave Rules given in Appendix 'L'. In the case of Mr. Munshi, his leave was sanctioned subject to the condition that he should stick to the department on his return. This condition was imposed by a Government Order (see file No. 3-10(9) page 14). This was a special order for the purpose of rule 751. The resignation tendered by Mr. Munshi can be said to be in breach of the said condition and may not be accepted and if he leaves Government service inspite of this, disciplinary action can be taken against him and he can be dismissed form service.

Remembrancer of Legal Affairs.

U.M. to P. & G.D. No. 381-Confl. dated 3rd June 1950.

GSP/20/6/56.

Office of the R.Lal.

The first point for consideration in this case is whether we should accept Shri Parekh's claim that the scale originally settled at the time of his appointment in September 1941 was as stated by him R. 650-50-1,000, and his further claim that although increments under the scale were not in fact given to him after he reached the stage of R.700 they were given to him in lump sum later, and that the stage of R. 1,000 was even accelerated. Considering that the order was passed the 14th March 1948, a few days before the merger, and that it relates to the Dewan of the State himself, it may not be easy to accept the above claims implicitly. That is, however, a matter for the Administrative Department to investigate and decide for itself.

2. On the assumption that Shri Parekh's claim inall these respects is true, his case would naturally fall under rule 7 of P. & S.D. G.R.No. 2755/46-II, dated 20th May 1949. Shri Parekh also maintins that he was given a free furnished bungalow with free electricity and free conveyance for himself and his family. Such perquisites are not usual in the case of Government servants in the State of Bombay, and they are not appropriate to the present position which Shri Parekh is holding. They may, therefore, be ignored form the totally of conditions applicable to his service, especially as Shri Parekh will now enjoy other compensating be advantages such as pension etc. In other respects he may be given the scale which he had in Dunsda, provided Government is satisfied of the truth of his claim.

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 8991, dated 19th June 1950.

H.D.

SSM / 20/6/56.

Office of the R.L.A.

Presumably Government has decided in this case that Government will itself bear the costs of the proceedings. There is thus no objection to engage the services of the Public Prosecutor at Ahmednagar for conducting the prosecution. Finance Department may see.

Remembrancer of Legal Affairs.

U.R. to F.D. (Poll.) No. 9534 dated the 8th July 1950.

331 / 20/6/56.

Office of the R.L.A.

hether the salary of
hri P.N.Mistry can be
orfeited.

The proposal of the Political and Services Department to cancel the leave granted to Shri Mistry would not be legally feasible firstly because the grant of leave was communicated to him and secondly because it was not conditional on his resuming duty after the expiry of leave. However, ordinarily a month's notice on either side is necessary before the service can be terminated. Nosuch notice was given by Shri Mistry. Consequently his salary for the broken period of the month i.e. from 1st November to 27th November 1949 can be forfeited b Government (see Ramji Manor v. F.D.Little, 10 Bom. H.C.R.57; cf. 35 all. 132; R.L.A's opinion No. 296,dated 12-1 1946; No. 1427, dated 20-2-1946 and No. 10955, dated 20-11-1943). Shri Mistry should be paid his salary up to the end of October 1049 and informed that his salary for the subsequent period was forfeited by Government as he resigned without notice.

Remembrancer of Legal Affairs.

U.R. to P. & S.D.; No. 678 Conf/. dated the 6th Sept 1950.

SSM / 20/6/56.

Office of the R.L.A.

Recovery of rent from Dr. Nadkarni for storage of his kit of Government premises.

The action of Government in recovering rent from Dr. Nadkarni for storing his kit in the Hospital building is lawful; but the rent charged to him by Governemnt for storing his kit in the kitchen and servant's quarters attached to the Civil Surgeon's bungalow form 23-3-1943 to 30-6-1944 would not be lawful as the premises for which the Civil Surgeon was charged rent included these premises and if at all any rent could be claimed for these premises, it would be by the Civil Surgeon and not by Government.

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D. No. 13659 dated 27th Sept. 1950.

SSM / 20/6/56.

Office of the R.L.A.

Bombay Civil Services Rules 9(2), 113.

Rule 113 of the Bombay Civil Services Rules lays down principles in accordance with which remuneration to be granted to a Government servant transferred to foreign service in India including an Indian State will have to be regulated. Under sub-rule (1) the pay which he shall receive in such service must be precisely specified in the order sanctioning the transfer. The two general principles which are observed in sanctioning conditions of transfer are (a) the terms must not be such as to impose an unnecessarily heavy burden on the foreign employer (b) the terms must not be so greatly in excess of remuneration, which the Government servant would receive in Government service as to render foreign service appreciably more attractive than Government service. 'Foreign service' means service in which a Government servant receives his substantive pay with the sanction of Government, (a) from any source other than the revenue of the Governor General in Council or of a province or the Railway Fund or (b) from a company working for a state Railway. A reference to a part A State or a Part C State and reference to a particualr Province shall be construed as reference to the corresponding State (see clause 16(1)(a) of the Adaptation of Laws Order, 1950). Saurashtra State is a Part B State consequently that State cannot beconsidered a Province within the meaning of rule 9(20) and the Government servants deputed there will have to be treated as deputed to foreign service. The view taken by the Saurashtra Government is not correct.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 14246 dated the 10th Oct., 1950.

R.I. No. 19699 of 28-10-50.

Reply may be:-

A through in the undertaking no mention is made that Shri Bhide's services can be ~~disfuse~~ dispensed with, <u>without notice</u> ., still it implies that ~~no~~ notice would be necessary for terminating his services. These appears therefore no objection to rejecting his claim for notice and the Suit if filed would be defensible.

Sd.

U.R. to H.D. No. 15892 dated 14-11-1900.

SJM / 20/6/56.

Office of the R.L.A.

Stoppage of Shri Behere's Pension B.C.S.Rules 254(2),274.

After the interview with H.M. (R. & H.) Shri Behere, it appears, put in an application on 12th May 1948 for retirement on pension on the condition that the departmental proceedings proposed against him should be dropped., Government by its letter dated the 24th May 1948 permitted him to retire and withdrew the departmental proceedings. It is true that in this letter it was not specifically stated that Shri Behere was permitted to retire on pension but that seems to be implied form the acceptance of his offer made in his letter of 12th May 1948. The subsequent conduct of Government in sanctioning him provisional pension reinforces the inference that Government agreed to grant him pension when they accepted his offer to retire. In the circumstances Shri Behere will be entitled to his pension and the stoppage of the provisional pension appears unwarranted.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 16623 , dated the 25th Nov.1950